



DEPARTMENT OF TRANSPORTATION

[4910-EX-P]

Federal Motor Carrier Safety Administration

[Docket No. FMCSA-2014-0106]

Qualification of Drivers; Application for Exemptions; Hearing

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of final disposition.

SUMMARY: FMCSA announces its decision to grant requests from 14 individuals for exemptions from the Agency's physical qualifications standard concerning hearing for interstate drivers. The current regulation prohibits hearing impaired individuals from operating CMVs in interstate commerce. After notice and opportunity for public comment, the Agency concluded that granting exemptions for these drivers to operate property-carrying CMVs will provide a level of safety that is equivalent to or greater than the level of safety maintained without the exemptions. The exemptions are valid for a 2-year period and may be renewed, and the exemptions preempt State laws and regulations.

DATES: The exemptions are effective [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]. The exemptions expire on [INSERT DATE 2 YEARS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: Charles A. Horan, III, Director, Office of Carrier, Driver and Vehicle Safety, (202) 366-4001, fmcsamedical@dot.gov, FMCSA, Department of Transportation, 1200 New Jersey Avenue, SE, Room W64-224, Washington, DC 20590-0001. Office hours are 8:30 a.m. to 5 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

A. ELECTRONIC ACCESS

You may see all the comments online through the Federal Document Management System (FDMS) at: www.regulations.gov.

Docket: For access to the docket to read background documents or comments, go to www.regulations.gov and/or Room W12-140 on the ground level of the West Building, 1200 New Jersey Avenue, SE, Washington, DC, between 9 a.m. and 5 p.m., e.t., Monday through Friday, except Federal holidays.

Privacy Act: In accordance with 5 USC 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to www.regulations.gov, as described in the system of records notice (DOT/ALL-14 FDMS), which can be reviewed at www.dot.gov/privacy.

B. BACKGROUND

Under 49 U.S.C. 31136(e) and 31315, FMCSA may grant an exemption from the safety regulations for a 2-year period if it finds “such exemption would likely achieve a level of safety that is equivalent to or greater than the level that would be achieved absent such exemption.” The statute also allows the Agency to renew exemptions at the end of the 2-year period. The current provisions of the FMCSRs concerning hearing state that a person is physically qualified to drive a CMV if that person:

First perceives a forced whispered voice in the better ear at not less than 5 feet with or without the use of a hearing aid or, if tested by use of an audiometric device, does not have an average hearing loss in the better ear greater than 40 decibels at

500 Hz, 1,000 Hz, and 2,000 Hz with or without a hearing aid when the audiometric device is calibrated to American National Standard (formerly ASA Standard) Z24.5—1951.

49 CFR 391.41(b)(11). This standard was adopted in 1970, with a revision in 1971 to allow drivers to be qualified under this standard while wearing a hearing aid, 35 FR 6458, 6463 (April 22, 1970) and 36 FR 12857 (July 3, 1971).

FMCSA grants 14 individuals an exemption from § 391.41(b)(11) concerning hearing to enable them to operate property-carrying CMVs in interstate commerce for a 2-year period. The Agency's decision on these exemption applications is based on the current medical literature and information and the "Executive Summary on Hearing, Vestibular Function and Commercial Motor Driving Safety" (the 2008 Evidence Report) presented to FMCSA on August 26, 2008. The evidence report reached two conclusions regarding the matter of hearing loss and CMV driver safety: (1) no studies that examined the relationship between hearing loss and crash risk exclusively among CMV drivers were identified; and (2) evidence from studies of the private driver license holder population does not support the contention that individuals with hearing impairment are at an increased risk for a crash. In addition, the Agency reviewed each applicant's driving record found in the CDLIS,¹ for CDL holders, and inspections recorded in MCMIS.² For non-CDL holders, the Agency reviewed the driving records from the State licensing agency. Each applicant's record demonstrated a safe driving history. The Agency believes the drivers covered by the exemptions do not pose a risk to public safety.

¹ Commercial Driver License Information System (CDLIS) is an information system that allows the exchange of commercial driver licensing information among all the States. CDLIS includes the databases of 51 licensing jurisdictions and the CDLIS Central Site, all connected by a telecommunications network.

² Motor Carrier Management Information System (MCMIS) is an information system that captures data from field offices through SAFETYNET, CAPRI, and other sources. It is a source for FMCSA inspection, crash, compliance review, safety audit, and registration data.

C. COMMENTS

On January 22, 2015, FMCSA published a notice of receipt of exemption applications and requested public comment on 14 individuals (FR 80 3306; Docket number FMCSA-2015-00995). The comment period ended on February 23, 2015. In response to this notice, one comment was received expressing concern for the process by which exemptions are granted from parts of 49 CFR 391.41, the increased volume of exemptions, and the need to rely on scientific support as a basis for granting the exemptions. The American Trucking Associations, Inc. (ATA) submitted a comment stating, “The granting of such a large number of exemptions dilutes the physical qualification standards and constitutes regulation through exemption. FMCSA must begin a dialogue on the need and effectiveness of these standards. If it is determined that these standards need to be altered, it must be done through the formal rulemaking process.” FMCSA acknowledges ATA’s concerns and may consider in the future the initial steps to a formal rulemaking process to revise physical qualification standards.

D. EXEMPTIONS GRANTED

Following individualized assessments of the exemption applications, FMCSA grants exemptions from 49 CFR 391.41(b)(11) to 14 individuals. Under current FMCSA regulations, all of the 14 drivers receiving exemptions from 49 CFR 391.41(b)(11) would have been considered physically qualified to drive a CMV in interstate commerce except that they do not meet the hearing requirement. FMCSA has determined that the following 14 applicants should be granted an exemption:

Weston Tyler Arhurs

Mr. Arhurs, 28, holds an operator's license in California.

Kevin Ray Ballard

Mr. Ballard, 38, holds an operator's license in Texas.

Jeremy Wayne Brandyberry

Mr. Brandyberry, 34, holds an operator's license in Nebraska.

Scott C. Friede

Mr. Friede, 40, holds a Class A commercial driver's license (CDL) in Nebraska.

Glenn E. Hivey

Mr. Hivey, 81, holds a Class A commercial driver's license (CDL) in Pennsylvania.

Jeremiah Putnam Hoagland

Mr. Hoagland, 35, holds a Class A commercial driver's license (CDL) in Colorado.

Curtis J. Horning

Mr. Horning, 40, holds an operator's license in Pennsylvania.

Leroy Lynch

Mr. Lynch, 59, holds a Class A commercial driver's license (CDL) in Ohio.

Floyd McClain, Jr.

Mr. McClain, 38, holds an operator's license in Florida.

Christopher David McKenzie

Mr. McKenzie, 37, holds an operator's license in Texas.

Kimothy Fred Mcleod

Mr. Mcleod, 51, holds a Class A commercial driver's license (CDL) in Georgia.

Victor Morales-Contreras

Mr. Morales-Contreras, 27, holds an operator's license in Texas.

Brandon Veronie, Sr.

Mr. Veronie, 36, holds a chauffeur's license in Louisiana.

Anthony L. Witcher

Mr. Witcher, 55, holds a chauffeur's license in Michigan.

BASIS FOR EXEMPTION

Under 49 U.S.C. 31136(e) and 31315, FMCSA may grant an exemption from the hearing standard in 49 CFR 391.41(b)(11) if the exemption is likely to achieve an equivalent or greater level of safety than would be achieved without the exemption. With the exemption, applicants can drive in interstate commerce. Thus, the Agency's analysis focuses on whether an equal or greater level of safety is likely to be achieved by permitting each of these drivers to drive in interstate commerce as opposed to restricting him or her to driving in intrastate commerce. The driver must comply with the terms and conditions of the exemption. This includes reporting any crashes or accidents as defined in 49 CFR 390.5 and reporting all citations and convictions for disqualifying offenses under 49 CFR part 383 and 49 CFR 391.

Conclusion

The Agency is granting exemptions from the hearing standard, 49 CFR 391.41(b)(11), to 14 individuals based on an evaluation of each driver's safety experience. Safety analysis of information relating to these 14 applicants meets the burden of showing that granting the exemptions would achieve a level of safety that is equivalent to or greater

than the level that would be achieved without the exemption. In accordance with 49 U.S.C. 31315, each exemption will be valid for 2 years from the effective date with annual recertification required unless revoked earlier by FMCSA. The exemption will be revoked if the following occurs: (1) the person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained prior to being granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136 and 31315.

FMCSA exempts the following 14 drivers for a period of 2 years from the physical qualification standard concerning hearing: Weston Tyler Arhurs (CA); Kevin Ray Ballard (TX); Jeremy Wayne Brandyberry (NE); Scott C. Friede (NE); Glenn E. Hivey (PA); Jeremiah Putnam Hoagland (CO); Curtis J. Horning (PA); Leroy Lynch (OH); Floyd McClain, Jr. (FL); Christopher David McKenzie (TX); Kimothy Fred Mcleod (GA); Victor Morales-Contreras (TX); Brandon Veronie, Sr. (LA); and Anthony L. Witcher (MI).

Issued on: September 29, 2015

Larry W. Minor
Associate Administrator for Policy

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